

ESTTA Tracking number: **ESTTA576432**

Filing date: **12/13/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91208855
Party	Defendant The Wine Group LLC
Correspondence Address	PAUL W REIDL LAW OFFICE OF PAUL W REIDL 241 EAGLE TRACE DRIVE, SECOND FLOOR HALF MOON BAY, CA 94019 UNITED STATES paul@reidllaw.com
Submission	Opposition/Response to Motion
Filer's Name	Paul W. Reidl
Filer's e-mail	paul@reidllaw.com
Signature	/pwr/
Date	12/13/2013
Attachments	Opposition to Motion to Compel.pdf(47862 bytes)

1 **BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **TRADEMARK TRIAL AND APPEAL BOARD**

3
4 Application Serial No. 85/736,374

5 Mark: (B)URBAN

6 Class: 33

7
8 **GREATER LOUISVILLE**
9 **CONVENTION & VISITORS**
10 **BUREAU,**

11 Opposer/Respondent,

12 v.

13 **THE WINE GROUP, LLC,**

14 Applicant/Counterclaimant.

Opposition No. 91208855

**APPLICANT’S OPPOSITION TO
MOTION TO COMPEL**

15 This is a stunning and completely unnecessary motion. Of course Applicant will produce
16 its documents: **it never refused to do so.**

17 As the Board knows, the parties had a disagreement over the manner of producing the
18 documents. Both document requests instructed that the documents be copied and sent to counsel.
19 Opposing counsel decided not to require compliance with his own instructions and, instead,
20 demanded that TWG’s counsel travel to Louisville to look at a sample of documents and then
21 negotiate with Opposer over what would actually be copied and given to TWG.

22 TWG objected to this unilaterally imposed and novel procedure, engaged in a meet and
23 confer, and when Opposer’s counsel said that he stood by his new position, filed a motion to
24 compel. The Board stayed proceedings retroactive to the date of the motion (July 15). It denied

1 the motion on November 3, 2013, holding that opposing counsel's conduct and procedure was
2 fully compliant with the Board's Rules. It reset the schedule with discovery closing on March 3,
3 2014, i.e., four months later.

4 Opposer filed this motion ten (10) days later. If this motion had been made in Federal
5 Court, Opposer's counsel would be sanctioned because it is frivolous for at least six reasons:

6 1. TWG's document responses were due on July 18, 2013, i.e., after the stay was
7 entered (30 days from the date of service + 5 days for mailing).

8 2. The proper manner for producing the documents was the subject of the motion.
9 That's what the dispute was about. TWG has always been willing to copy and send its
10 documents to Opposer's counsel but he wanted more: he wanted to travel to California and on
11 July 26, 2013 he served a Rule 30 (b)(6) deposition notice to accompany his review of TWG's
12 documents. He was told by the undersigned that this was improper while the motion was
13 pending. He insisted on his right to take the deposition and demanded that TWG provide him
14 with dates. His insistence on coming to California to review the documents and take the
15 deposition prompted the undersigned to contact the Interlocutory Attorney about the pending
16 motion, ask that a stay be entered and that it be made retroactive. This was done.

17 Under the circumstances, it would have been unreasonable to have expected TWG to
18 have permitted Opposer's counsel to come to California and take his deposition of TWG. (In
19 fact, the alleged intransigence of TWG that is the subject of this motion actually saved Opposer
20 from paying counsel to make two trips to California: one to review documents and a second to
21 take the improperly-noticed deposition.) Obviously both parties were waiting for the outcome of
22 the Board's decision because it would affect how discovery proceeded.

1 3. Opposer's counsel did not engage in a proper meet and confer on this motion.
2 He filed his motion eight business days after he won the prior motion. He sent one paragraph
3 letters on November 4 (Monday) and November 8 (Friday) which asked for dates when he could
4 travel to California to review the documents. He filed his motion on November 13. He never
5 expressed any sense of urgency, he never said that he was going to file a motion, he never
6 expressed his concern that TWG would not produce his documents, he never made the
7 arguments he now makes in his motion, and he never gave any indication that there was a dispute
8 at all. **He simply demanded dates.** The undersigned did not respond immediately because both
9 he and his client contact were out of town the week of the 4th and counsel had to clear available
10 dates with the client and on his own docket before responding substantively to Opposer's
11 counsel. Had Opposer's counsel telephoned the undersigned's office he would have learned that
12 counsel was out of town that week. But for some unexplained reason Opposer's counsel thought
13 this matter was so incredibly urgent that he could not wait longer than eight business days after
14 the Board's Order to file this motion.

15 4. There is no sense of urgency here. There is still 4 months left in the discovery
16 period. Opposer itself has yet to provide dates when opposing counsel can, as required by the
17 Board, travel to Louisville to look at the sample documents and begin negotiating with
18 Opposer's counsel over which documents will be copied and produced to TWG.

19 5. TWG has never said that it would not produce the documents. This is made clear
20 in its responses to the document requests. The dispute has been over the **manner of production**,
21 which the Board has now resolved.

22 6. Finally, in an exercise of chutzpah, after demanding that TWG allow him to
23 review the documents personally at TWG's offices, and convincing the Board that it is
24

1 appropriate for him to require TWG's counsel to travel to Louisville to look at a representative
2 sampling of Opposer's documents and then engage in a meet and confer over precisely what will
3 be produced, and then filing a motion because TWG did not immediately give him dates when he
4 could travel to California to review the documents, Opposing counsel now magnanimously states
5 in his motion that it would be acceptable after all for TWG to comply with his original
6 instructions and copy and send the documents to him. As the Board recognized in its Order, that
7 is clearly the more convenient and least expensive way to produce documents, it is what both
8 parties asked of each other, and all TWG wanted to do in the first place. This will be done.

9 The Board should not tolerate sharp and cynical practices like these. This motion is
10 wholly unnecessary and a waste of everyone's time and money because TWG will copy and mail
11 the documents to Opposer's counsel just as Opposing counsel originally requested.

12 The motion should be denied.

13 Respectfully submitted,

14 **LAW OFFICE OF PAUL W. REIDL**

15 

16 By: _____

17
18 Dated: December 13 2013

19 Paul W. Reidl
20 Law Office of Paul W. Reidl
21 241 Eagle Trace Drive
22 Second Floor
23 Half Moon Bay, CA 94019
24 (650) 560-8530
paul@reidllaw.com

*Attorney for Applicant,
The Wine Group*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

on Opposer by placing a true copy thereof in the United States mail enclosed in an envelope, postage prepaid, addressed as follows to their counsel of record at his present business address:

Executed on December 13, 2013 at Half Moon Bay, California.

James Beith